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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/612,091	07/02/2003	Theodore M. Lach III	13822	5805

7590 01/27/2006

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EXAMINER

JACKSON, MONIQUE R

ART UNIT	PAPER NUMBER
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1773

DATE MAILED: 01/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/612,091

Applicant(s)

LACH ET AL.

Examiner

Monique R. Jackson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 November 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4-7 and 9 is/are pending in the application.
- 4a) Of the above claim(s) 10-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 4-7 and 9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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DETAILED ACTION

1. Applicant's election with traverse of Group I, Claims 1, 4-7 and 9 in the reply filed on 11/3/05 is acknowledged. The traversal is on the ground(s) that 1) a substantive action on all the claims has already been issued and 2) the inventions are sufficiently related to warrant a single search. This is not found persuasive because, as noted by the Applicant, a restriction requirement can be issued at any time during prosecution if deemed appropriate by the Examiner wherein in the instant case, the Examiner notes that the inventions are clearly distinct for the reasons recited in the prior office action wherein the Examiner specifically notes that Applicant's Claims 19-20 do not require the sealing composition recited in Claim 1 and hence are not sufficiently related.

The requirement is still deemed proper and is therefore made FINAL.

2. Claims 1, 4-7, and 9-20 are pending in the application. Claims 10-20 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 11/3/05.

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1, 4-7 and 9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which

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applicant regards as the invention. Claims 1, 4, 6-7 and 9 recite concentrations in percentages for various components of the sealant material in terms of the sealant, however the claims still do not provide a basis for these percentages, i.e. weight percentage, volume percentage, etc. and hence one having ordinary skill in the art would not be reasonably apprised of the scope of the claimed invention and could not interpret the metes and bounds of the claim so as to understand how to avoid infringement.

Claim Rejections - 35 USC § 102

6. Claims 1, 4 and 7-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Knight et al (USPN 4,619,848) for the reasons recited in the prior office action and restated below, wherein the Examiner takes the position that the limitation at lines 9-11 of Claim 1, namely “wherein the sealant material, **when positioned** about a first component is overmolded...” (*emphasis added*) constitutes intended use of the instantly claimed sealing material and considering the sealing material taught by Knight et al is also capable of functioning in the same manner, the limitation does not provide any patentable difference over the sealing material taught by Knight et al.

7. Knight et al teach a composition and method for sealing containers wherein the sealing gasket for the inner surface of the container closure comprises a blend of 55 to 99% ethylene vinyl acetate (EVA) copolymer having a vinyl acetate content of less than 25% and 1 to 50% of polyethylene (PE) (Abstract; Col. 1, lines 37-49) and the composition may further comprise below 25% of a plasticizer such as a hydrocarbon resin, preferably from 5 to up to 15%; below 20% of a slip aid, preferably 1 to 3%; below 10% of non-fusible material such as titanium dioxide, clay or other inorganic pigments or filler, preferably 0.5 to 3% by weight of the organic components; and other minor components, for example antioxidants, below 10%, preferably

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below 5%, by weight of the organic components (Abstract; Col. 1, lines 36-67; Col. 2, lines 17-35 and 54-58; Col. 2, line 64-Col. 3, line 8.) Knight et al specifically teach that the composition may comprise 50 to 99wt% of said blend of EVA and PE (said blend comprising 50 to 99% EVA and 1 to 50% PE), 0 to 25% by weight plasticizing resin (*reads upon hydrocarbon resin*), 0.2 to 20% by weight slip agent and 0 to 10% by weight non-fusible material (*both read upon inert filler material*), and hence would read upon the instantly claimed percentages wherein EVA is the first polymer and PE is the second polymer.

Claim Rejections - 35 USC § 103

8. Claims 5-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Knight et al. The teachings of Knight et al are discussed above. Though Knight et al teach that the composition may comprise various additives including pigments and slip agents, Knight et al does not specifically teach utilizing calcium carbonate in the instantly claimed percentage. However, calcium carbonate is an obvious species of filler material or inorganic pigment utilized in the art and would have been obvious to one having ordinary skill in the art at the time of the invention.

Response to Arguments

9. Applicant's arguments with respect to claims 1, 4-7 and 9 have been considered but are not persuasive and/or moot in view of the Examiner's statements above, particularly with regards to the limitation "wherein the sealant material, **when positioned** about a first component is overmolded".

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

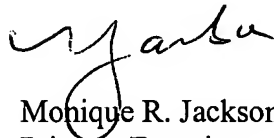
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Monique R. Jackson whose telephone number is 571-272-1508. The examiner can normally be reached on Mondays-Thursdays, 8:00AM-4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carol Chaney can be reached on 571-272-1284. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Monique R. Jackson
Primary Examiner
Technology Center 1700
January 23, 2006